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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MC CLARY COLUMBIA CORPORATION,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 84-55

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a regulatory order affirming a \$3,000 fine for unauthorized disposal of a hazardous waste, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, presiding, on April 4, 1984, at Vancouver, Washington, in a formal hearing. Court reporter Tami Kern recorded the proceedings.

Appellant was represented by its company president Jack McClary. Respondent was represented by Assistant Attorney General, Leslie Neller-moe.

Witnesses were sworn and testified. Exhibits were admitted and

1 examined. Final written argument was received. From the testimony,
2 evidence, and contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 McClary Columbia Corporation is a reprocessor and recycler of
6 industrial solvents, a manufacturer of specialty chemicals (including
7 chemical defoamer--both oil-based and water-based), and a transporter
8 of non-recyclable wastes. Hazardous wastes are dealt with during all
9 phases of their operation, and, as such, the business operates subject
10 to federal and state regulation.

11 The president of this family-owned business is Jack McClary, who
12 started the firm 6 1/2 years ago. His business is a training,
13 storage, and disposal (TSD) facility for hazardous wastes under terms
14 of RCW 70.105, located at Washougal. The operation is conducted
15 pursuant to a Department of Ecology (DOE) permit.

16 II

17 Respondent agency is the implementing authority for hazardous
18 waste laws and regulations under RCW 70.105 and WAC 173-303.

19 III

20 Appellant corporation is periodically visited by inspectors from
21 respondent agency. On September 22, 1983, a casual inspection by DOE
22 revealed approximately seventeen gallons of a sludge waste had been
23 shoveled from a drum solvent dumping area filter screen into a
24 domestic/commercial garbage dumpster. Respondent inspector took
25 samples of the sludge waste and photographs. He properly sealed the

26 FINAL FINDINGS OF FACT,
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1 samples and sent them in for laboratory analysis.

2 IV

3 The Olympia Environmental Laboratory of DOE accomplished a 96-hour
4 fish bioassay on a sample. The sample proved fatal and was noted to
5 be an extremely hazardous waste.

6 Appellant was notified of this finding and informed that a penalty
7 docket would be issued for improper handling and disposal of this
8 waste in accordance with RCW 70.105.080. Such sludge wastes are
9 supposed to be placed into 55 gallon drums for disposal at an
10 EPA-approved landfill, not in open dumpsters.

11 Appellant asserts the seventeen gallons was lacquer thinner and is
12 a small amount of waste. He further asserts a new employee deposited
13 the waste into the wrong receptacle, in violation of his general
14 instructions.

15 V

16 Respondent agency has had other regulatory encounters with
17 appellant: some were earlier that same month and involved white
18 defoamer being contained in an inappropriate place. Inspectors have
19 observed disposal problems at the site--particularly in the sump
20 area--and have documented a slow response by McClary Columbia. An
21 ongoing concern of respondent has been the absence of a required
22 comprehensive analysis of the wastes produced at the site.

23 Informal attempts by respondent to encourage more prompt and
24 regular compliance with the pertinent laws and regulations on the part
25 of McClary Columbia Corporation have not been successful.

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1 Individuals formerly employed by McClary Columbia testified to
2 safety hazards, spills, and waste disposal problems they experienced
3 and observed while working at the facility. Appellant McClary
4 testified these incidents were overdramatized and incorrectly described
5 by these former employees.

6 In 1980 there was a deterioration and breakage of PVC pipe exiting
7 from the property which caused oils flowing through it to end up in a
8 creek. This incident occurred because of chemicals or steam eating
9 away the pipe. There was a DOE citation given to appellant following
10 the oil spill.

11 VI

12 Appellant company asserts it has an employee training program in
13 place since 1980, in accordance with federal Resource Conservation and
14 Recovery Act requirements. Respondent was under the impression a
15 certifiable employee training plan was not made known until more
16 recently. Inspection findings and observations reveal the personnel
17 training plan did not always result in employees using lawful disposal
18 methods for the company's by-products.

19 VII

20 Respondent agency issued Docket No. DE 83-541 citing McClary
21 Columbia Corporation for the September 22, 1983, improper disposal of
22 an extremely hazardous waste in violation of RCW 70.105.050, WAC
23 173-303-140, and WAC 173-303-280. Thereafter, appellant applied to
24 respondent DOE for relief from the penalty, which letter was received
25 at DOE on December 12, 1983. DOE made the customary review of a

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1 docket order and penalty and affirmed the original amount of \$3,000.
2 The Department issued a Notice of Disposition upon Application for
3 Relief from Penalty on January 17, 1984. From this Notice appellant
4 company appealed to the Board on February 14, 1984.

5 VIII

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings of Fact the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over these persons and these matters.
12 RCW 43.21B.

13 II

14 Washington State law, at RCW 70.105.050, provides for disposal of
15 designated extremely hazardous waste only at a designated site. If
16 there is not a designated site at any moment in time in Washington
17 State under RCW 70.105, then an EPA-approved disposal facility in
18 another state is a designated site. WAC 173-303-140 states in part:

19 No person shall dispose of designated extremely
20 hazardous waste at any land disposal facility in the
21 state other than the facility established and
approved by the department for such purpose under
chapter 70.105.

22 A garbage dumpster on one's property cannot, under any circumstances,
23 be considered a designated site. The disposal event discovered on
24 appellant's plant site September 22, 1983, was in violation of RCW
25 70.105.050.

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III

Penalties may be issued to violators of the state's hazardous waste laws under terms of RCW 70.105.080, which provides in part:

(1) Every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided. (Emphasis added.)

Three thousand dollars is a relatively modest penalty for the subject violation and the Docket, No. DE 83-541, should be affirmed.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From the Conclusions of Law the Board enters this

ORDER

Department of Ecology Docket No. DE 83-541 is affirmed.

DONE this 17th day of May, 1984.

POLLUTION CONTROL HEARINGS BOARD

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Did not participate
DAVID AKANA, Lawyer Member

Lawrence J. Faulk 5/17/84
LAWRENCE J. FAULK, Vice Chairman